



REPUBLIC OF KENYA



**Kitela v Shenga & 2 others (Environment & Land Case E453 of 2021)
[2024] KEELC 3526 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3526 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E453 OF 2021**

JO MBOYA, J

APRIL 4, 2024

BETWEEN

RAPHAEL MBATHA KITELA PLAINTIFF

AND

OMAR SHENGA 1ST DEFENDANT

EMBAKASI RANCHING LTD 2ND DEFENDANT

DANCAN KAMAU KIARIE 3RD DEFENDANT

JUDGMENT

Introduction and Background

1. The Plaintiff approached the Honourable court vide Plaint dated the 21st December 2021 and in respect of which same sought for various reliefs pertaining to and concerning the suit property. Further, the Plaint under reference was subsequently amended culminating to the amended Plaint dated the 14th April 2022.
2. Be that as it may, the Plaintiff also sought for and obtained Leave to re-amend the amended Plaint and in this respect the Plaintiff filed a Further amended Plaint dated the 27th February 2023; and in respect of which same has sought for the following reliefs;
 - i. A declaration that the Plaintiff is the lawful proprietor of LR No Nairobi/Block 105/4615.
 - ii. A permanent injunction to restrain the Defendants both jointly and/or severally from interfering with the Plaintiff's quiet possession of LR No Nairobi/Block 105/4615, formally known as Plot No. V 5045 issued by the 2nd Defendant under certificate number 029318; title number LR No Nairobi/Block 105/4615.



- iii. An order for cancellation of lease certificate held by the 3rd Defendant in respect of LR No Nairobi/Block 105/4615 and the land registrar at Nairobi lands office/registry be directed to rectify the register thereof to reflect the Plaintiff as the registered proprietor of LR No Nairobi/Block 105/4615.
 - iv. A claim for General Damages against the Defendants.
 - v. Costs of the suit.
3. Upon being served with the original Plaint and summons to enter appearance, the 1st Defendant duly entered appearance and filed statement of defense dated the 25th March 2022; and in respect of which same disputed the claims by and on behalf of the Plaintiff.
 4. Furthermore, even though the Plaintiff subsequently filed and served a Further amended plaint dated the 27th February 2023, the 1st Defendant did not file any amended statement of defense or at all. Consequently, it is deemed that the 1st Defendant adopted and relied on the statement of defense dated the 25th March 2022 as his operative pleading in defense of the Plaintiff's claim.
 5. On the other hand, the 2nd Defendant duly entered appearance and filed a statement of defense dated the 8th August 2022; and in respect of which same contended, inter-alia that the suit property had been allocated to and in favor of a third party, who has not been impleaded in respect of the instant matter.
 6. Nevertheless, upon being served with the Further amended Plaint, the 2nd Defendant proceeded to and filed an amended statement of defense dated the 20th June 2023; and in respect of which same reiterated the averments that had hitherto been alluded to at the foot of the statement of defense dated the 8th August 2022. Instructively, the 2nd Defendant denied the Plaintiff's claim to the suit property.
 7. Other than the foregoing, the 3rd Defendant herein neither entered appearance nor filed any statement of defense. In this respect, the Plaintiff's suit as against the 3rd Defendant proceeded on the basis of formal proof.
 8. Suffice it to point out that the instant matter came up for pre-trial directions on the 5th October 2022, whereupon the advocates for the respective Parties confirmed that same [parties] had filed and exchanged the requisite pleadings, list and bundle of documents, as well as the witness statement[s]. Consequently and in this regard, the parties confirmed that the suit was ready for hearing.
 9. Arising from the confirmation by and on behalf of the Parties [details in terms of the preceding paragraphs] the instant matter was indeed set down [scheduled] for hearing.

Evidence By The Parties:

a. Plaintiff's Case:

10. The Plaintiff's case revolves and gravitates around the evidence of one [1] witness, namely, Raphael Mbatha, who testified as PW1.
11. It was the testimony of the witness [PW1] that same is also referred to as Raphael Mbatha Kitela, as well as Raphael Mabatha Nduiya. In any event, the witness averred that same is conversant with the facts of the instant matter.
12. Additionally, the witness averred that same [PW1], has since recorded a witness statement dated the 19th April 2022 and thereafter same sought to adopt and rely on the contents of the witness statement.



- Instructively, the witness statement dated the 19th April 2022; was thereafter adopted and constituted as the Evidence in chief of the witness.
13. Similarly, the witness alluded to a List and bundle of documents dated the 19th April 2022, containing six [6] documents and which documents the witness sought to tender and produce before the court as his evidence in support of the claim beforehand. For good measure, the documents at the foot of the List dated the 19th April 2022; were thereafter adopted and constituted as Exhibit[s] P1-6, respectively.
 14. Furthermore, the witness also adverted to the further amended Plaintiff dated the 27th February 2023; and sought to rely on same. Suffice it to state that the contents of the Further amended Plaintiff and the attached verifying affidavit were thereafter adopted as part of the evidence of the Plaintiff.
 15. Other than the foregoing, it was the testimony of the witness that same entered into a sale agreement with the 1st Defendant on the 25th August 2008; whereupon the 1st Defendant sold to and in his favor Plot No. 105/4615, situate within Embakasi Ranching Company Ltd. Besides, the witness averred that upon the sale of the property by the 1st Defendant, the 1st Defendant handed over to and in his favor the share certificate relative to the suit property.
 16. It was the further evidence of the witness that the share certificate which was issued to and in the name of the 1st Defendant was transferred to and registered in his [Plaintiff's name].
 17. On cross examination by learned counsel for the 1st Defendant, the witness averred that same bought the share pertaining to the suit property from the 1st Defendant. Besides, the witness averred that the suit property was encompassed in the share which was sold unto him [Plaintiff] by the 1st Defendant.
 18. On further cross examination, the witness averred that the property which was sold unto him measured 100 fit by 100 Feet . In any event, it was the testimony of the witness that the suit property was sold on the basis of the sale agreement dated the 25th August 2008.
 19. Whilst under further cross examination, the witness averred that at the time when the suit property was sold unto him, same [suit property] did not have a certificate of title.
 20. On the other hand, it was the testimony of the witness that prior to and before purchasing the suit property from the 1st Defendant, same [Plaintiff] undertook a search with the 2nd Defendant over the share which same [Plaintiff] bought from the 1st Defendant.
 21. It was the further testimony of the witness that upon purchasing the 1st Defendant's rights in respect of the share, same [Plaintiff] made payments to and in favor of the 2nd Defendant culminating into the transfer of the share certificate in his favor. For clarity, the witness confirmed that the payments made towards facilitating the transfer of the share, was duly received and acknowledged by the 2nd Defendant.
 22. Additionally, it was the evidence of the witness that upon receipt and acknowledgement of the requisite fees for the transfer of the share, the share was duly transferred unto him [Plaintiff] and a share certificate was processed and issued in his favor.
 23. On further cross examination, the witness averred that thereafter the 1st Defendant handed over vacant possession of the suit property unto him. In this regard, the witness averred that same indeed entered upon, took occupation of the suit property and even erected structures thereon.
 24. On the other hand, it was the testimony of the witness that it is the 2nd Defendant who took same [witness] to the suit property and pointed out the ground location as well as the boundaries thereof. Furthermore, the witness added that same was even shown the beacons of the property.



25. On further cross examination, the witness averred that upon the sale of the suit property/plot, the 1st Defendant ensured that same took possession of the plot. In addition, it was the testimony of the witness that the 1st Defendant did not breach the terms of the contract.
26. Whilst under further cross examination, the witness averred that it is the 2nd Defendant who has failed to transfer the suit property unto him. Nevertheless, the witness averred that in respect of the instant matter, same was obliged to sue both the 1st and 2nd Defendants, in a bid to procure the issuance of the certificate of title to the suit property.
27. On cross examination by learned counsel for the 2nd Defendant, the witness averred that same has tendered and produced various documents before the court. In particular, the witness averred that same has tendered and produced before the court a copy of the sale agreement entered into on the 25th August 2008.
28. It was the further testimony of the witness that the sale agreement in question related to a property that had hitherto been allocated in favor of the 1st Defendant. For good measure, the witness averred that the property which same bought was L.R No 105/4615.
29. On further cross examination, the witness averred that the details of the property which same bought were contained and/or alluded to in the sale agreement as well as the share certificate. However, the witness added that same did not carryout any search at the Ministry of Lands to ascertain the ownership status of the property.
30. Whilst under further cross examination, the witness testified that the sale agreement which same has tendered and produced before the court does not bear the plot number. Nevertheless, the witness averred that the sale agreement which was entered into was duly signed and executed by the vendor [namely, the 1ST Defendant herein].
31. Whilst under further cross examination, the witness stated that no official of the 2nd Defendant signed the sale agreement. In any event, the witness avers that the sale agreement was between himself [Plaintiff] and the 1st Defendant, to whom the purchase price was duly paid.
32. On further cross examination, the witness averred that the 1st Defendant handed over to him [witness] the share certificate in respect of the suit property and the share certificate reflected/showed the plot number on the reverse thereof. In this respect, the witness referred to Exhibit P4.
33. It was the further testimony of the witness that the reverse side of the share certificate, which reflected the Plot number, namely, V5045, was duly signed by a surveyor. However, the witness clarified that the name of the surveyor is not shown on the reverse side of the share certificate.
34. On further cross examination, the witness testified that it is him who authorized the payments of the monies to the 2nd Defendant for purposes of the transfer of the share certificate from the 1st Defendant unto himself. However, the witness added that the actual payment was done by the 1st Defendant.
35. It was the further testimony that same bought the suit property from the 1st Defendant. However, the witness averred that upon purchase and acquisition of the suit property, same [Plaintiff] was taken to the suit property by a surveyor sent by the 2nd Defendant.
36. Other than the foregoing, it was the testimony of the witness that same [witness] got to know of the 1st Defendant from the time when same [witness] entered into the sale transaction. Furthermore, the witness added that he [witness] established that the first Defendant was an employee of the 2nd Defendant.



37. On re-examination, the witness herein testified that same entered into and executed a sale agreement with the 1st Defendant. In any event, the witness added that same has tendered and produced various documents/exhibits to show that the plot in question is the suit property.
38. It was the further testimony of the witness that the share certificate, which was produced and tendered before the court as Exhibit P4, bears a signature on the reverse side as well as a stamp of the 2nd Defendant's.
39. In any event, the witness added that the stamp also reveals the title number of the property in question. For clarity, the witness averred that the plot number alluded to in the stamp is L.R No. 105/4615.
40. Whilst under further re-examination, the witness averred that the stamp on the reverse of the share certificate [Exhibit P4] also shows Plot No. V5046. Nevertheless, the witness reiterated that it is the suit property which was sold unto him by the Defendant.
41. Further and in any event, the witness averred that Exhibit P5 shows and confirms that the Plot in question is traceable to map number 09. In any event, the witness confirms that same has availed the maps as one of the Exhibits before the Honourable court.
42. On the other hand, the witness reaffirmed that the details of the Plot which was sold unto him by the 1st Defendant are reflected and contained on the face of the sale agreement.
43. With the foregoing testimony, the Plaintiff's case was duly closed.

b. 1st Defendant's Case:

44. Similarly, the 1st Defendant's case also revolves around the evidence of one [1] witness, namely, Omar Shenga. Same testified as DW1.
45. It was the testimony of the witness [DW1] that same is conversant with the facts pertaining to and concerning the subject matter. Furthermore, the witness also averred that same has since recorded a witness statement dated the 25th March 2022, detailing the facts of the matter herein and which witness statement same sought to adopt as his Evidence before the court.
46. For coherence, the witness statement dated the 25th March 2022; was thereafter adopted and constituted as the evidence in chief of the witness.
47. Furthermore, the witness also alluded to a List and bundle of documents dated the 25th March 2022, containing three [3] documents and which documents, the witness sought to tender and produce before the court.
48. Instructively, the documents at the foot of the list dated the 25th March 2022; were thereafter adopted and hence admitted as Exhibit[s] D1 to D3, respectively on behalf of the 1st Defendant.
49. On the other hand, the witness also alluded to the statement of defense dated the 25th March 2022 and similarly sought to adopt and rely on the contents thereof.
50. On cross examination by learned counsel for the Plaintiff, the witness averred that it is same [witness] who sold to and in favor of the Plaintiff the suit property. In any event, the witness added that the property in question was hitherto allocated unto him [witness] by the 2nd Defendant.
51. It was the further testimony of the witness that upon the allocation of the suit plot unto him, the 2nd Defendant generated and issued a share certificate in his [witness] favor.



52. On further cross examination, the witness averred that the share certificate which same has tendered and produced before the Honourable court was signed by the Directors of the 2nd Defendant.
53. On the other hand, it was the testimony of the witness that same thereafter sold the suit property to and in favor of the Plaintiff. Furthermore, the witness averred that upon the sale of the suit property to the Plaintiff, same [witness] duly informed and alerted the 2nd Defendant.
54. In any event, the witness avers that after the sale of the suit property to the Plaintiff, same [witness] handed over the share certificate to the Plaintiff.
55. On further cross examination, the witness averred that the plot which same sold to and in favor of the Plaintiff and which was contained in map number 09 was duly shown and pointed out to the Plaintiff by Mr. Kinyanjui, who was a surveyor with the 2nd Defendant.
56. On cross examination, by learned counsel for the 2nd Defendant, the witness averred that same was allocated plot number V5045, which is shown/reflected on the face of share certificate number 0106415.
57. Whilst under further cross examination, the witness averred that share certificate which was issued to and in his favor was dated the 15th May 2005.
58. Whilst under further cross examination, the witness averred that the property which same sold and transferred to the Plaintiff was L.R No. 105/4516 and which property corresponded with allocation number V5045. In any event, it was the further testimony of the witness that upon the sale of the suit property to the Plaintiff, the Plaintiff acquired lawful rights and interests over the said property.
59. It was the further testimony of the witness that the transfer of the suit property to and in favor of the Plaintiff was authorized and sanctioned by the 2nd Defendant. On the other hand, it was the testimony of the witness that after the transfer of the suit property to the Plaintiff was sanctioned and authorized by the 2nd Defendant, the 2nd Defendant herein designated a surveyor who proceeded to and pointed out the suit plot to the Plaintiff.
60. On further cross examination, the witness averred that the plot in question was allocated unto him [witness] by the 2nd Defendant. In any event, the witness added that same was thereafter issued with a share certificate which was duly signed on the reverse side by a surveyor.
61. Other than the foregoing, it was the testimony of the witness that upon the sale of the suit property to the Plaintiff, the share certificate relative to the suit property was transferred to and issued in favor of the Plaintiff.
62. On re-examination, the witness averred that same was issued with a share certificate pertaining to and concerning Plot No. V5045. In any event, the witness added that the said Plot corresponds with L.R No 105/4516, which is the suit property.
63. On further re-examination, the witness averred that the share certificate in favor of the Plaintiff was issued in the year 2014. Nevertheless, it was the testimony of the witness that the transaction between him was formalized in the year 2008.
64. Other than the foregoing, the witness averred that Exhibit P4, which is the share certificate shows that the plot which was transferred to the Plaintiff is the suit property. In any event, the witness confirmed that the suit property was lawfully transferred to and thus belongs to the Plaintiffs.



65. Whilst under further re-examination, the witness averred that the transfer of the suit property/plot to and in favor of the Plaintiff was sanctioned and approved by the 2nd Defendant. In any event, the witness added that it is the approval by the 2nd Defendant, which led to the issuance of the share certificate in favor of the Plaintiff.
66. Additionally, it was the testimony of the witness that same [witness] has never been charged with any criminal offence or at all arising from the allotment of the suit property unto him or the execution of his mandate as the company secretary of the 2nd Defendant.
67. Finally, it was the testimony of the witness that the suit property lawfully belongs to the Plaintiff and hence the 2nd Defendant ought to be compelled to transfer same [suit property] to the Plaintiff.
68. With the foregoing testimony, the 1st Defendant's case was duly closed.

c. 2nd Defendant's Case:

69. The 2nd Defendant's case revolves around the testimony of one [1] witness, namely, Jack Kamau Wachira. Same testified as DW2.
70. It was the testimony of the witness [DW2] that same is a surveyor currently working with the 2nd Defendant. In this regard, the witness averred that same is therefore conversant with the facts of the instant matter.
71. Furthermore, the witness averred that same [witness] has also recoded a witness statement as pertains to the facts of the instant case. In this regard, the witness adverted to the statement dated the 20th June 2023 and thereafter sought to adopt the named witness statement.
72. Consequently and at the request of the witness, the witness statement dated the 20th June 2023; was duly adopted and constituted as the evidence in chief of the witness.
73. Other than the foregoing, the witness referred to the List and bundle of documents dated the 20th June 2023; containing four [4] documents and which documents the witness sought to produce before the court as exhibits on behalf of the 2nd Defendant.
74. Suffice it to point out that the documents at the foot of the List dated the 20th June 2023, were tendered before the Court; and which documents were thereafter adopted and marked as Exhibit[s] D1 to D4 on behalf of the 2nd Defendants.
75. Additionally, the witness alluded to the amended statement of defense dated the 20th June 2023; and which statement of defense the witness sought to adopt and rely.
76. On cross examination by learned counsel for the 1st Defendant, the witness confirmed that the share certificate which was issued in favor of the 1st Defendant is valid. Furthermore, the witness added that by the word valid, same [witness] confirms that the said share certificate was duly issued by the 2nd Defendant herein.
77. On further cross examination, the witness averred that the share certificate was issued and signed by the 1st Defendant and that same is dated the 15th May 2005. On the other hand, it was the testimony of the witness that the 1st Defendant was duly authorized to issue and sign share certificates.
78. Whilst under further cross examination, the witness confirmed that Exhibit D3 on behalf of the 1st Defendant is a share certificate in favor of the Plaintiff. Furthermore, the witness averred that the said share certificate was issued by the 2nd Defendant.



79. On further cross examination, the witness averred that the share certificate in the name of the Plaintiff [Exhibit D3] on behalf of the 1st Defendant is valid.
80. Other than the foregoing, the witness averred that it is the 1st Defendant who sold Plot No. V5045 to the Plaintiff. In any event, it was the testimony of the witness that plot number V5045 does not correspond with the suit property.
81. Other than the foregoing, it was the testimony of the witness that the Plaintiff herein made payments on account of transfer of the suit property [the Property at the foot of the instant suit].
82. On further cross examination, the witness averred that Exhibit D1 on behalf of the 2nd Defendant relates to a non-member share certificate for plot number 029103. In any event, the witness averred that plot number 029103, was/is in the name of one Bounty Ndungu Kamau, who is a minor.
83. Whilst under further cross examination, the witness averred that the plot number is V15911. In addition, the witness stated that the said plot was allocated on the 12th August 2014.
84. Furthermore, the witness averred that the allocation of plot number V15911 was done by himself. However, the witness averred that same does not have the documents to confirm the date of allocation.
85. Similarly, the witness added that same does not have the map relating to the plot in question, namely, V15911.
86. On further cross examination, the witness aver that same does not have any evidence to show that the 1st Defendant was ever charged with any criminal offense as pertains to the allocation of the suit plot.
87. On cross examination, by learned counsel for the Plaintiff, the witness averred that same is a surveyor with the 2nd Defendant. In any event, the witness added that same does not hold any other position in the 2nd Defendant company.
88. On further cross examination, the witness stated that same has not alluded to the fact that the Plaintiff is claiming a different plot in his [witness] statement of defense.
89. Besides, the witness averred that the three [3] certificates which were tendered and produced on behalf of the Plaintiff and the 1st Defendant are valid. Furthermore, the witness added that all the said certificates were issued by the 2nd Defendant.
90. It was the further testimony of the witness that the certificate in favor of the Plaintiff is valid. In any event, the witness added that the said share certificate in favor of the Plaintiff and which was issued on the 20th December 2014 relates to plot number V5045.
91. Whilst under further cross examination, it was the testimony of the witness that the plot number currently appearing on the certificate of title is L.R No. Nairobi/Block 105/4650.
92. Other than the foregoing, it was the evidence of the witness that same [witness] has not stated that the stamp appearing on the reverse of the share certificate of the Plaintiff is a forgery.
93. Furthermore, whilst still under cross examination, the witness averred that the document that same has tendered and produced before the court shows that the property in question was registered in the name of Bounty Ndungu. Nevertheless, the witness has added that there was a change of ownership on the 30th November 2018.
94. Be that as it may, the witness has averred that the documents which the witness has tendered and produced before the court does not have any history as pertains to the ownership of the plot.



95. Additionally, it was the testimony of the witness that there were criminal proceedings that were lodged against the 1st Defendant. Nevertheless, the witness averred that same [witness] does not have copies of the criminal proceedings before the court.
96. On further cross examination by learned counsel for the Plaintiff the witness avers that same [witness] has indicated in his written statement that the land/plot in question doesn't belong to the Plaintiff. Nevertheless, the witness added that in arriving at that conclusion same relied on records of the 2nd Defendant herein.
97. On re-examination, the witness averred that the share certificate in the name of the Plaintiff herein has a stamp on the reverse thereof. Nevertheless, the witness added that the stamp in question does not come from the 2nd Defendant.
98. On the other hand, it was the further testimony of the witness that the stamp in favor of the Plaintiff does not have an endorsement by any of the directors of the company. However, whilst under further re-examination, the witness averred that the share certificate which was held by the 1st Defendant is lawful.
99. Whilst under further re-examination, the witness averred that same has tendered documents to show that the suit property is in the name of Bounty Ndungu Kamau. In any event, the witness stated that the plot which was issued in favor of Bounty Ndungu Kamau was plot number 15911. Furthermore, the witness added that the plot in question is currently registered in the name of Bounty Ndungu Kamau.
100. With the foregoing testimony, the 2nd Defendant's case was duly closed.

d. 3rd Defendant's Case:

101. Though the 3rd Defendant herein was duly served with the Further amended Plaint which impleaded same, the 3rd Defendant neither entered appearance nor filed any statement of defense.
102. Owing to the foregoing, the 3rd Defendant neither defended nor contested the claim[s] by the Plaintiff. In any event, the Plaintiff's suit as against the 3rd Defendant proceeded on the basis of formal proof.

Parties' Submissions:

103. At the close of the hearing and essentially the close of the 2nd Defendant's case, the advocates for the respective Parties sought to file and exchange written submissions.
104. Pursuant to and at the request of the advocates for the respective Parties, the court proceeded to and circumscribed timelines for the filing and exchange of the written submissions. Further and in any event, the Parties thereafter duly complied and filed their written submissions.
105. For coherence, learned counsel for the Plaintiff filed two [2] sets of written submissions, namely, the submissions dated the 13th February 2024 and further written submissions dated the 5th February 2024 [but which should be the 5th March 2024] given that the 2nd Defendant's submissions being responded to are dated the 23rd February 2024.
106. On the other hand, the 1st Defendant filed written submissions dated the 4th March 2024, whereas the 2nd Defendant filed written submissions dated the 23rd February 2024, together with a List and bundle of authorities of even date.



107. Suffice it to point out that the various sets of written submissions [details in terms of the preceding paragraphs] forms part of the record of the court and same shall be referenced, whilst crafting the subject Judgment.
108. Be that as it may, even though the court has not rehashed and reproduced the salient features of the said written submissions, it is instructive to underscore that the failure to do so, is not borne out of any contempt or at all.
109. Further and in any event, it is imperative to observe and outline that the written submissions filed by and on behalf of the parties are indeed helpful and have highlighted the issues in dispute and thus same are indeed helpful to the court, in its endeavor to resolve and adjudicate upon the dispute pertaining to ownership of the suit property, namely, L.R No. Nairobi/Block 105/4650.

Issues For Determination:

110. Having reviewed the pleadings filed by and on behalf of the Parties; the evidence tendered [both oral and documentary] and the written submissions filed on behalf of the respective Parties, the following issues do emerge [crystalize] and are thus worthy of determination;
 - i. Whether Plot No. V5045, which is now referenced as L.R No. Nairobi/Block 105/4650; was duly allocated to the 1st Defendant by the 2nd Defendant herein or otherwise.
 - ii. Whether the Plaintiff herein is a bona fide purchaser for value of the suit property from the 1st Defendant and if so; whether the Plaintiff acquired lawful rights and interests thereto.
 - iii. Whether the 2nd Defendant has established and/or proved the allegations of [sic] fraud as against the 1st Defendant in terms of the allocation of the suit property.
 - iv. What reliefs, if any; ought to be granted.

Analysis And Determination:

Issue Number 1 Whether Plot No. V5045, which is now referenced as L.R No. Nairobi/Block 105/4650 was duly allocated to the 1st Defendant by the 2nd Defendant herein or otherwise.

111. The dispute beforehand touches on and concerns the ownership over and in respect of the suit property which is currently referenced as L.R No. Nairobi/Block 105/4650.
112. Consequently and insofar as the dispute touches on ownership of the suit property, it is therefore imperative to trace the origin and the initial allocation pertaining to and concerning what now constitutes the suit property.
113. To this end, it is worthy to recall that DW1 contended that what now constitutes the suit property was hitherto plot number V5045. In any event, DW1 contended that the named plot was duly and lawfully allocated unto him by the 2nd Defendant company.
114. As pertains to the allocation of plot number V5045 to and in favor of the 1st Defendant [DW1] it suffices to take cognizance of the evidence of Dw1 whilst under cross examination by learned counsel for the 2nd Defendant.



115. Same [DW1] testified as hereunder;

“My property was V5045. My share certificate was number 0106415. The share certificate was issued on the 15th May 2005. The allocation number was V5045. The title number was 105/4615”.

116. Whilst under further cross examination by learned counsel for the 2nd Defendant DW1 ventured forward and stated as hereunder;

“I was allocated the plot by the 2nd Defendant. It is the surveyor who signed the reverse of the share certificate”.

117. On the other hand DW2, [Jack Kamau Wachira], who testified on behalf of the 2nd Defendant herein was succinct as pertains to the allocation of plot number V5045 to and in favor of the 1st Defendant. In particular, whilst under cross examination by learned counsel for the 1st Defendant, DW2 stated as hereunder;

“I have seen the documents filed by the 1st Defendant. The share certificate in favor of the 1st Defendant is valid. I do clarify that by the word valid I mean that the same was duly issued by the 2nd Defendant herein”.

118. Furthermore, DW2 whilst still under cross examination by learned counsel for the 1st Defendant stated as hereunder;

“The 1st Defendant sold plot number V5045 to the Plaintiff. Plot number V5045 does not correspond with the suit property. I further wish to clarify that plot number V5045 and V16023 are separate and distinct.

119. Whilst under cross examination by learned counsel, DW2 stated as hereunder;

“The plot that is allocated is V5045. The number currently appearing on the certificate of title is L.R No. Nairobi/Block 105/4615. I have not said that the stamp appearing on the reverse of the share certificate of the Plaintiff is a forgery”.

120. From the totality of the evidence tendered, it is evident and apparent that plot number V5045, [which admittedly now constitutes the suit property] was allocated to and in favor of the 1st Defendant.

121. On the other hand, it is also worthy to point out that upon the allocation of the designated Plot to and in favor of the 1st Defendant, the 1st Defendant herein duly complied with the terms of the allotment and consequently, same accrued lawful rights and interests thereto.

122. In any event, it is not lost on this court that the 2nd Defendant, who was the allocating authority does not contest the allocation of the designated property. Furthermore, the said 2nd Defendant has not contended that the 1st Defendant failed to comply with or adhere to the terms of the allotment.

123. Nevertheless, there is no gainsaying that following the allotment of plot number V5045 to and in favor of the 1st Defendant, the 2nd Defendant proceeded to and issued a share certificate, namely, share certificate number 0106515 to and in favor of the 1st Defendant.



124. Suffice it to point out that by issuing the named share certificate to and in favor of the 1st Defendant, the 2nd Defendant herein confirmed and indeed authenticated that the plot in question [whose details were captured and reflected on the reverse of the share certificate] was duly and lawfully allocated.
125. To my mind, upon the allocation and/or allotment of the designated plot to and in favor of the 1st Defendant, same [1st Defendant] thereafter became the lawful and legitimate owner of the designated property.
126. On the other hand, having duly and lawfully allocated plot number V5045 and which admittedly bears the details of the suit property, the 2nd Defendant herein ceased to have any lawful rights and or authority over the designated plot or better still, the designated ground comprising of the Plot in question.
127. In this respect, it is imperative to observe that after [once] the 2nd Defendant had allocated the designated plot to and in favor of the 1st Defendant, the 2nd Defendant could not purport to reallocate the same plot or better still, the same ground to a third party under the guise of plot number V15911.
128. In short, the purported allocation of the disputed ground which comprises of Plot V5045 to a Third Party under the guise of Plot No. V15911; was therefore a nullity and an exercise in futility.
129. To buttress the foregoing exposition of the law, it suffices to adopt and reiterate the holding of the Court of Appeal in the case of Benja Properties Limited versus Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR, where the court stated and held as hereunder;
25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5th respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.
130. Similarly, the Court of Appeal in the case of Philemon L. Wambia v Gaitano Lusitsa Mukofu & 2 others [2019] eKLR, where the court held thus;
- “36. On our part, we have considered the evidence on record on the two letters of allotment. The evidence on record shows that the first allotment to the suit property was to Mr. Joseph Muturi Muthurania. In Benja Properties Limited -v- Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR, this Court stated that an allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land.
37. In the instant case, the second letter of allotment to the appellant did not attach in rem to any land since there was no parcel upon which the allotment could attach. The first allotment to Mr. Joseph Muturi Muturania effectively made the suit property unavailable for allotment to the appellant the more when the first allottee had fulfilled the terms and conditions of the allotment.”
131. In my humble view, plot number V5045, which admittedly bears the reference of L.R No Nairobi/ Block 105/4615, was lawfully allocated to and in favor of the 1st Defendant.



132. In a nutshell, my answer to issue number one [1] herein before is therefore threefold. Firstly, the 2nd Defendant duly and lawfully allocated plot number V5046 [now L.R No Nairobi/Block 105/4615] to and in favor of the 1st Defendant.
133. Secondly, having lawfully allocated to and in favor of the 1st Defendant the designated property, the 2nd Defendant ceased to have any lawful rights and/or interests thereto.
134. Thirdly, insofar as the 2nd Defendant had no lawful rights and interests to the named plot and by extension the ground comprising of the named plot, same [2nd Defendant] could not therefore purport to reallocate the same ground to a third party under the guise of Plot No. V15911 or at all.

Issue Number 2 Whether the Plaintiff herein is a bona fide purchaser for value of the suit property from the 1st Defendant and if so whether the Plaintiff acquired lawful rights and interests thereto.

135. Having been duly allocated plot number V5045 [now L.R no Nairobi/Block 105/4615] and having duly complied with the terms of allotment culminating into the issuance of share certificate number 0106415; the 1st Defendant therefore acquired lawful rights to and in respect of the designated plot.
136. Furthermore, having acquired lawful rights to and in respect of the suit plot, there is no gainsaying that the 1st Defendant was therefore seized of the requisite capacity to sell and/or dispose of the designated plot.
137. In any event, there is no gainsaying that the registered proprietor and/or an allottee [who has complied with the terms of allotment] is vested with lawful rights to the property, which rights include inter-alia, the right to occupy [usus], the right to possess [fructus] and the right to alienate [abusus], respectively.
138. Premised on the extent and scope of rights that inhere upon the registered proprietor and/or an allottee [who has complied with the terms of the allotment], it is common ground that such a proprietor and/or an allottee is therefore vested with the mandate to enter into and/or execute a sale agreement pertaining to and concerning the designated property.
139. Arising from the foregoing, there is therefore no debate as to whether or not the 1st Defendant had the capacity to enter into the sale agreement with the Plaintiff. For good measure, it suffices to point out that the 1st Defendant lawfully entered into and executed a sale agreement with the Plaintiff on the 25th August 2008.
140. Furthermore, upon entry into and execution of the named sale agreement, the Plaintiff herein duly paid to and in favor of the 1st Defendant the agreed purchase price. Instructively the payment of the agreed purchase price/consideration was duly acknowledged and admitted by DW1.
141. On the other hand, evidence abound that upon the execution of the sale agreement, coupled with receipt of the purchase price, the 1st Defendant [vendor] proceeded to and facilitated the transfer of the share certificate to and in favor of the Plaintiff.
142. Additionally, evidence was tendered before the court that the transfer of the designated property to and in favor of the Plaintiff was duly sanctioned and approved by the 2nd Defendant, who thereafter proceeded to and issued a share certificate in favor of the Plaintiff.
143. For good measure, it is instructive to reproduce the evidence of DW1 whilst under cross examination by learned counsel for the 2nd Defendant.



144. Same stated as hereunder;

“I truly sold and transferred the suit property to the Plaintiff. The property lawfully belongs to the Plaintiff herein. I am the one who lawfully transfer the property to the Plaintiff. The transfer of the plot/property was thereafter sanctioned by the 2nd Defendant. The 2nd Defendant herein acknowledged the transaction and approved the transfer. The 2nd Defendant thereafter proceeded to and issued to the Plaintiff another share certificate bearing the name of the Plaintiff”.

145. Other than the evidence of DW1 [whose details have been captured in the preceding paragraph], the evidence of DW2 is also instructive and succinct.

146. For ease of reference, Dw2 stated as hereunder whilst under cross examination by learned counsel for the 1st Defendant.

“Referred to document number 3 on the 1st Defendant’s list of documents and the witness states that the same is a share certificate in favor of the Plaintiff. The share certificate was issued by the 2nd Defendant. I wish to clarify that the document is valid”.

147. On further cross examination by learned counsel for the 1st Defendant, DW2 ventured forward and stated thus;

“I do confirm that the Plaintiff made payments to and on account of the suit property”.

148. From the foregoing testimony, there is no gainsaying that the 1st Defendant, who had hitherto been duly allocated Plot No. V5045, indeed sold same to the Plaintiff.

149. Additionally, it is also instructive to point out that upon the sale of the plot by the 1st Defendant to and in favor of the Plaintiff, the sale was presented to the 2nd Defendant who duly sanctioned and approved same [sale].

150. Furthermore, there is no gainsaying that upon the approval of the sale of the designated plot by the 2nd Defendant same [2nd Defendant] proceeded to and issued the requisite share certificate to and in favor of the Plaintiff.

151. Other than the foregoing, it is also imperative to underscore that the share certificate which was issued to and in favor of the Plaintiff related to and was in respect of the specific property which had been sold by the 1st Defendant.,

152. Notwithstanding the foregoing, it is also worthy to recall and reiterate that the share certificate which was issued to and in favor of the Plaintiff was duly confirmed by Dw2, to be valid.

153. For brevity, it is appropriate to reproduce the pertinent aspects of the evidence of DW2 whilst under cross examination by learned counsel for the Plaintiff.

154. Same stated as hereunder;

“I do confirm that the three certificate are valid. I also do confirm that the certificates were issued by the 2nd Defendant. I do confirm that the certificate in favor of the Plaintiff is valid”.

155. In my humble view, the Plaintiff herein entered into a lawful sale agreement with the 1st Defendant, over and in respect of the designated plot, which lawfully belonged to the 1st Defendant.



156. Consequently and in view of the foregoing, the Plaintiff accrued and acquired lawful rights over and in respect of the designated plot [now suit property] which same [Plaintiff] bought from the 1st Defendant.
157. At any rate, it is also worth recalling that upon the sanction and approval of the transfer of the designated plot to and in favor of the Plaintiff, the 2nd Defendant designated a surveyor who proceeded and pointed out that beacons of the plot to the Plaintiff.
158. To my mind, the evidence that has been tendered by PW1, DW1 and DW2, respectively, establishes that indeed the Plaintiff was a bona fide purchaser for value after payment of due consideration to and in favor of the vendor.
159. Furthermore, the totality of the evidence also establishes that prior to and before purchasing the suit plot, the Plaintiff exercised due diligence and indeed authenticated that the designated plot belonged to the 1st Defendant. Furthermore, the Plaintiff also verified and confirmed that the 1st Defendant's name was in the 2nd Defendant's register of members.
160. On the other hand, it is also worth recalling that the 2nd Defendant sanctioned and approved the sale and transfer of the designated plot to and in favor of the Plaintiff, without raising any question or at all.
161. Notably, the approval of the transfer signified that the 1st Defendant's title was free from any defect or at all.
162. Simply put, the Plaintiff herein fits within the parameters of a bona fide purchaser for value and thus same is entitled to the requisite protection under the law.
163. As pertains to the ingredients to be established prior to and before a declaration of bona fide purchaser for value can be rendered, it suffices to adopt and reiterate the holding in the case of Arthi Highway Developers Limited versus West End Butchery Limited & 6 others [2015] eKLR, where the court held and stated as hereunder;

“A Bona fide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a. He holds a certificate of Title.
- b. He purchased the Property in good faith;
- c. He had no knowledge of the fraud;
- d. The vendors had apparent valid title;
- e. He purchased without notice of any fraud;
- f. He was not party to any fraud.

A bona fide purchaser of a legal estate without notice has absolute unqualified and answerable defence against claim of any prior equitable owner.”

164. Similarly, it is also important to take cognizance of the holding in the case of Mwangi James Njehia v Janetta Wanjiku Mwangi & another [2021] eKLR, where the Court [Court of Appeal] stated and observed as hereunder;



37. In *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 Others*, Nairobi Civil Appeal No. 146 of 2014 this Court cited with approval the case of *Katende v. Haridar & Company Ltd* (2008) 2 EA 173, where the Court of Appeal in Uganda held that:-

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly.

For a purchaser to successfully rely on the bona fide doctrine as was held in the case of *Hannington Njuki v William Nyanzi* High Court civil suit number 434 of 1996, must prove that:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

We nonetheless wish to state that the law, including case law is not static and the above requirements which were crafted over twenty years ago cannot be said to have been cast in stone. We hold the view that (5) above will need to be revisited and the word “apparent” be done away with altogether.

165. Lastly and without belaboring the point, the ingredients that underpin bona fide purchase for value were also highlighted and elaborated upon by the Supreme Court of Kenya [the apex court], in the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment), where the court stated thus;

90. The Black’s Law Dictionary 9th Edition defines a bona fide purchaser as: “One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”
91. The Court of Appeal in Uganda in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, defined a bona fide purchaser for value as follows: “For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that:1.he holds a certificate of title;2.he purchased the property in good faith;3.he had no knowledge of the fraud;4.he purchased for valuable consideration;5.the vendors had apparent valid title;6.he purchased without notice of any fraud; and7.he was not party to the fraud.”
92. On the same issue, the Court of Appeal in *Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No 28 of 2005* [2015] eKLR stated as follows:“...in order to be considered a bona



fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

166. From the foregoing analysis, my answer to issue number two [2] is twofold. Firstly, the Plaintiff herein bought and acquired the designated plot [now the suit property] from the vendor who held a valid title thereto.
167. Secondly, that the Plaintiff herein is thus a bona fide purchaser for value without notice of any defect or at all in the title of his predecessor [the vendor].
168. Consequently and in the premises, the Plaintiff is entitled to the requisite protection of the court as pertains to the rights acquired and arising from the lawful purchase of the suit property. [See he provisions of sections 24 and 25 of the *Land Registration Act*, 2012].

Issue Number 3 Whether the 2nd Defendant has established and/or proved the allegations of [sic] fraud as against the 1st Defendant in terms of the allocation of the suit property.

169. The 2nd Defendant herein had contended that the allocation of the suit plot to and in favor of the 1st Defendant was fraudulent and thus illegal.
170. Furthermore, the 2nd Defendant also contended that the 1st Defendant, who was hitherto the company secretary of the 2nd Defendant used his portfolio as the company secretary to allocate unto himself the suit plot and hence the First Defendant did not acquire any lawful rights to and in respect of the suit plot.
171. Additionally, the 2nd Defendant propagated a position that arising from the fraudulent acquisition of the suit plot, the 2nd Defendant mounted a criminal complaint against the 1st Defendant who was thereafter [sic] charged with a criminal offense before Makadara Law Courts.
172. In a nutshell, the 2nd Defendant took the position that on the basis of the fraud which was committed by the 1st Defendant herein, same [1st Defendant] acquired no lawful rights to and in respect of the suit plot.
173. Nevertheless, despite the contention by and on behalf of the 2nd Defendant, it is important to recall that the 2nd Defendant herein did not implead and/or particularize fraud in her statement of defense or at all.
174. To my mind, if the 2nd Defendant was convinced that the 1st Defendant acquired the suit plot by fraud [forgery], then it behooved the 2nd Defendant to implead fraud and thereafter supply particulars thereof, in accordance with prescription of the law. [see the provisions of Order 2 Rule 10 of the Civil Procedure Rules, 2010].
175. Furthermore, it is trite and established law that no evidence pertaining to and/or concerning a plea founded on fraud can be tendered before a court of law and/or utilized, where the claimant [person making such allegation] has not impleaded fraud.
176. Simply put, where evidence seeking to establish fraud is tendered/adduced before the court, albeit in the absence of the requisite pleadings, in the manner prescribed, such evidence are inconsequential and devoid of any legal basis[foundation].



177. Without belaboring the foregoing position, it suffices to adopt and reiterate the hackneyed position obtaining in the holding in the case of Kuria Kiarie & 2 others versus Sammy Magera [2018] eKLR, where the court of appeal stated and held thus;

25. The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].

The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.

26. As regards the standard of proof, this Court in the case of Kinyanjui Kamau vs George Kamau [2015] eKLR expressed itself as follows:-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

27. We have examined the appellants' amended defence for any pleading on particulars of fraud or illegality but there is none. The claims were therefore stillborn and no evidence could be tendered. Even if it was open to tender evidence on fraud and illegality, the mere allegation that a sale agreement and a Consent for transfer cannot be obtained on the same day is well below the standard of proof set under the authorities cited. We need not belabour this issue as we are satisfied that it was neither properly pleaded nor strictly proved. That ground of appeal fails too.

178. Other than the failure to implead fraud and supply particulars thereof at the foot of the amended statement of defense, the 2nd Defendant herein also failed to tender [adduce] any credible evidence towards proving the purported fraud.

179. To the contrary, DW2, who testified on behalf of the 2nd Defendant admitted and acknowledged that plot number V5045 [now the suit property], was lawfully allocated to and in favor of the 1st Defendant.

180. Additionally, DW2 also confirmed that the 2nd Defendant generated and issued to and in favor of the 1st Defendant certificate number 0106415. For good measure, DW2 confirmed that the said certificate was valid.



181. Other than the foregoing, it is also not lost on the court that DW2 also admitted that same had no evidence at all to vindicate the contention that the 1st Defendant had hitherto been charged and arraigned in Court with any criminal offense pertaining to the allocation of the suit plot.
182. For the sake of brevity, it is imperative to reproduce the evidence of Dw2, whilst under cross examination by learned counsel for the 1st Defendant.
183. Same stated as hereunder;
- “I don’t have any evidence to show that the 1st Defendant was ever charged with any criminal offense as pertains to the allocation of the suit plot”.
184. In any event, whilst under cross examination by learned counsel for the Plaintiff DW2 stated as hereunder’
- “There were criminal proceedings that were lodged against the 1st Defendant. I don’t have the criminal proceedings before the court”.
185. From the foregoing, there is no gainsaying that the allegations pertaining to and/or concerning fraud [forgery] as against the 1st Defendant, were merely being propagated to conceal [camouflage] the inadequacy on the part of the 2nd Defendant.
186. Notably, it is the 2nd Defendant herein, who whilst knowing that the suit plot or better still the ground comprising of the suit plot, had been lawfully allocated purported to allocate same to one Bounty Ndungu Kamau – minor.
187. At any rate, it is common knowledge that no allocation, which is contractual in nature, can be made to and in favor of a minor. In any event, the 2nd Defendant and her legal advisors, ought to have known better that a minor cannot enter into any legal contract, whatsoever.
188. In my humble view, the purported allocation of the ground comprising of Plot number V5045, under the guise of plot number V15911 to and in favor of Bounty Ndungu Kamau [minor] constituted one of the many illegalities which were being perpetrated by the 2nd Defendant with a view to defrauding the Plaintiff of his lawful rights to the suit property.
189. Without belaboring the point, my answer to issue number three [3] is threefold. Firstly, the plea founded on fraud, which was being propagated by and on behalf of the 2nd Defendant was neither pleaded nor particularized in accordance with the provisions of Order 2 Rule 10 of the Civil Procedure Rules, 2010.
190. Secondly, the evidence that was tendered by and on behalf of the 2nd Defendant towards proving fraud, were futile and in vain.
191. Thirdly, the totality of the evidence that was tendered by DW2 on behalf of the 2nd Defendant was contradictory and deficient. In any event, it turned out that DW2 was a witness devoid of any credibility and/or candour, taking into account the inherent contradictions in his witness statement, as well as evidence before the court.



Issue Number 4 What reliefs, if any; ought to be granted.

192. Suffice it to point out that the Plaintiff herein has sought for a plethora of reliefs at the foot of the Further amended plaint dated the 27th February 2023. Instructively, the various reliefs sought for at the foot of the operative pleading relate to ownership of the suit property.
193. Be that as it may, whilst discussing issue number two [2] herein before, the court came to the conclusion that the Plaintiff is indeed a bona fide purchaser for value as pertains to plot number V505 [currently the suit property].
194. On the other hand, the court also found and held that insofar as same [Plaintiff] is a bona fide purchaser for value in respect of the suit property, same is therefore entitled to partake of and benefit from the rights flowing therefrom.
195. Consequently and in view of the foregoing, there is no gainsaying that a declaration suffices in favor of the Plaintiff with a view to confirming that same is the lawful proprietor of L.R No Nairobi/Block 105/4615 [formerly plot number V5045].
196. Furthermore, having found and held that the Plaintiff is the lawful owner and proprietor of the suit property, it then means that any other certificate of title issued to and in favor of Bounty Ndungu Kamau or Duncan Kamau Kiarie [the 3rd Defendant], are unlawful and illegal.
197. Premised on the foregoing, there is no gainsaying that such title/certificate of title are incapable of conferring and/or vesting in the beneficiaries thereof any lawful rights to the suit property.
198. To this end, it is appropriate to take cognizance of the holding of the Court of Appeal in the case *Funzi Development Ltd & others v County Council of Kwale, Mombasa Civil Appeal No 252 of 2005 [2014] eKLR* the Court of Appeal, which decision this court affirmed, stated that:
- “...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”
199. Finally, the Plaintiff sought for General damages. In this regard, it suffices to observe that the Plaintiff was entitled to the benefits attendant to ownership of the suit property. However, his rights and interest thereto were defeated by the actions and omission[s] of the 2nd and 3rd Defendants.
200. In a nutshell, it is my finding and holding that the Plaintiff has established a basis to warrant the grant of General damages. Consequently and in this regard, I hereby make an award in the sum of Kes.1, 000, 000/= Only, to and in favor the Plaintiff.

Final Disposition:

201. Having reviewed and considered the thematic issued which were enumerated in the body of the Judgment [details herein before supplied], it is now appropriate to bring the Judgment to a close.
202. Be that as it may, in the course of discussing the various issues hitherto mentioned, the court has found and held that the Plaintiff herein has indeed established and proved his claim to and in respect of the suit property.
203. Consequently and in the premises, the court proceeds to and enters Judgment in favor of the Plaintiff in the following terms;



- i. A declaration be and is hereby issued that the Plaintiff is the lawful owner and proprietor of L.R No Nairobi/Block 105/4615.
- ii. Consequently, the 2nd Defendant be and is hereby ordered to generate, execute, sign and seal the requisite lease instrument and such other conveyance to facilitate the transfer and registration of L.R No Nairobi/Block 105/4615 in favor of the Plaintiff.
- iii. The certificate of title [sic] issued in favor of one Bounty Ndungu Kamau [minor] if any, be and is hereby canceled and revoked.
- iv. The certificate of title in respect of L.R No Nairobi/Block 105/4615 issued to and in favor of the 3rd Defendant, if any be and is hereby revoked, canceled and nullified.
- v. The Chief Land Registrar be and is hereby ordered to gazette the cancellation of the certificate of title in respect of L.R No Nairobi/Block 105/4615; to Bounty Ndungu Kamau and the 3rd Defendant respectively.
- vi. An order of Eviction be and is hereby issued as against Bounty Ndungu Kamau and the 3rd Defendant from the suit property, namely, L.R No Nairobi/Block 105/4615.
- vii. A permanent injunction be and is hereby issued restraining the 2nd and 3rd Defendants, either by themselves, agents, servants, employees and/or anyone acting under their instructions, from entering upon, remaining on and/or otherwise dealing with the suit property in the manner adverse to the rights of the Plaintiff.
- viii. General damages be and is hereby awarded in the sum of Kes.1, 000, 000/= Only, as against the 2nd and 3rd Defendants with interests at court rates [14%] per annum from the date of this Judgment.
- ix. The Plaintiff's suit against the 1st Defendant be and is hereby dismissed albeit without costs.
- x. The Plaintiff be and is hereby awarded costs of the suit as against the 2nd and 3rd Defendants to be taxed in the usual manner.

204. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF APRIL, 2024.

OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson – Court Assistant

Ms. Mutua h/b for Mr. Macharia Gakuo for the 2nd Defendant

Mr. Njuguna h/b for Mr. Ngata Kamau for the 1st Defendant

N/A for the Plaintiff

N/A for the 3rd Defendant

30| Page

